

releasable joint and to define a waist opening and a pair of leg openings and provide said absorbent article; and

C1  
B1  
d) a fastener permanently attached to each of said back panels adjacent said side seams and configured to refastenably engage one of said front panels and upon disengagement of said releasable joints, said fasteners are also configured to refastenably engage said exterior surface of said absorbent chassis in said front waist region, wherein said fasteners define a fastener edge length in said longitudinal direction and said releasable joints define a releasable joint length in said longitudinal direction, wherein said releasable joint length is greater than said fastener edge length.

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### Remarks

Claims 1-31 are pending in the instant application. In the Office Action mailed July 5, 2002, the Examiner rejects claims 1-12, 14-21 and 23-31 and objects to claims 13 and 22. By virtue of the present amendment, claim 23 of the present invention has been amended to more clearly recite that which is claimed and to recite that the fasteners are configured to engage the exterior surface of the absorbent chassis in the front waist region upon disengagement of the releasable joint. **A Version Of The Claims Reflecting The Changes Made** is submitted herewith as Appendix A. Based on the amendments and remarks made herein, Applicants respectfully request that the rejections be withdrawn and that the application be passed to allowance.

### 1. Rejection of Claims 23-31 Under 35 U.S.C. § 112

In the Office Action mailed July 5, 2002, the Examiner rejects claims 23-31 under 35 U.S.C. § 112, Second Paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. This rejection is respectfully **traversed** as it may apply to the presently presented claims.

The Examiner believes that the phrase "configured to engage one of said front panels and upon disengagement of said releasable joints, said exterior surface of said absorbent chassis in said front waist region ..." is indefinite. The Examiner believes that it is unclear what is happening upon disengagement of the releasable joints. Applicants believe that the Examiner's concern has been addressed by the amendment made to claim 23 herein. Based

on the foregoing, Applicants respectfully request that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

**2. Rejection of Claims 1-8, 10-12, 14-17 and 19-21 under 35 U.S.C. § 102(b)**

In the Office Action mailed July 5, 2002, the Examiner rejects claims 1-8, 10-12, 14-17 and 19-21 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,624,429 issued to Long et al. (hereinafter "the Long patent"). This rejection is respectfully traversed.

The Examiner renews the grounds for rejection that she made in the Office Action mailed December 31, 2001. The Examiner also responds to the arguments made in Applicants' response filed April 10, 2002. With respect to Applicants' argument that the Long patent does not disclose side panels that define a waist opening and a pair of leg openings, the Examiner responds that the side panels of the Long patent extend from the back waist region and attach to the front waist region, and therefore form/define the waist opening and leg opening. The Examiner also responds that the side panel of the Long patent is also capable of attaching to the very end of the side edge of the front portion, so that there is a gap between the front waist portions and back waist portion and therefore, the side panel is part of the waist opening edge and the leg openings' edges. Further, the Examiner responds that the Long patent discloses the side panels extend outward from and between the side edges of the absorbent chassis to define a waist opening and a pair of leg openings.

In reply to the Examiner's response, Applicants renew their argument that the Long patent fails to disclose, either explicitly or implicitly, an absorbent article including a pair of opposed side panels that extend outward from and between the side edges of the article's chassis in the front waist region and the back waist region to define a waist opening and a pair of leg openings. Independent claims 1 and 14 both include this feature of the side panels defining a waist opening and a pair of leg openings.

The Long patent relates to adhesive tape fastening systems and interlocking, mechanical-type fastening systems which can be employed with disposable articles (See Col. 1, lines 8-10). The Long patent discloses absorbent articles including a component referred to in the Long patent as a "side panel" (depicted by reference numeral "90" in the figures of the Long patent). The "side panels" of the Long patent may be elastomerically stretchable and may be attached to each side edge region of one of the waistband sections. (See Col. 3, lines 59-64). While the "side panels" of the Long patent may include a fastening component, the "side panels" do not

define a waist opening or a pair of leg openings. The articles of the Long patent include longitudinally extending side edge margins (depicted by reference numeral "110") that define the leg openings of the articles. (See Col. 4, lines 43-47 & Col. 12, lines 58-61).

Therefore, the Long patent does not explicitly disclose articles including side panels that define a waist opening and a pair of leg openings. In the Final Office Action mailed July 5, 2002, the Examiner expresses her belief that the "side panel" of the Long patent is capable of attaching to the very end of the side edge of the front portion, in such a way that there is a gap between the front waist portion and the back waist portion, and therefore, the "side panel" forms part of the waist opening and leg openings. Applicants interpret the Examiner's remarks to mean that the Examiner believes the Long patent inherently discloses the claim element of the side panels defining a waist opening and a pair of leg openings.

To support an anticipation rejection based on inherency, an Examiner must provide factual and technical grounds establishing that the inherent feature necessarily flows from the teachings of the prior art. In the present case, the Examiner is required to establish that the "side panels" of the Long patent necessarily would define a waist opening and a pair of leg openings. The disclosure of the Long patent providing that the leg openings are defined by side edge margins belies any argument of the "side panels" serving this purpose. The Examiner's belief that the "side panels" are capable of attaching to the very end of the side edge of the front portion does not necessarily flow from the disclosure of the Long patent.

Claim 14 of the present invention includes additional features such as a pair of front panels and a side seam. In the Final Office Action mailed July 5, 2002, the Examiner responds to the Applicants' prior arguments by referring Applicants to the "rejection above for further clarification." Applicants have reviewed the bases of the Examiner's rejection of the claims, but fail to appreciate the Examiner's basis for believing that the Long patent discloses these features of an absorbent article. Based on the foregoing, Applicants respectfully request that the rejection of claims 1-8, 10-12, 14-17 and 19-21 under 35 U.S.C. § 102(b) be withdrawn.

## **2. Rejection of Claims 23-26 and 28-30 under 35 U.S.C. § 103(a)**

In the Office Action mailed July 5, 2002, the Examiner rejects claims 23-26 and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over the Long patent. This rejection is respectfully **traversed**.

The Examiner renews the grounds for rejection that she made in the Office Action mailed December 31, 2001. The Examiner also responds to the arguments made in Applicants' response filed April 10, 2002. With respect to Applicants' argument that the Long patent lacks motivation to arrive at the invention of the present application as claimed, the Examiner responds that the Long patent discloses the use of two panels, one of which is attached to the back waist region, one of which is attached to the front waist region and the two panels being attached together in the middle. The Examiner also responds that the Long patent discloses that the attachment of the two panels together is permanent and the attachment of the panel to the front waist region is releasable. The Examiner responds that one of ordinary skill in the art would have to just switch the two fasteners. Further, the Examiner responds that the Long patent discloses a panel is permanently attached to one or more waist regions, therefore providing the motivation that a panel can be permanently attached to both the front and rear waist regions. The Examiner responds that it is well within the skill of one of ordinary skill in the art to switch the bonds.

In reply to the Examiner's response, the Applicants renew the arguments made in the response filed April 10, 2002. Additionally, the Examiner's response does not address each of the features delineated for the article of claim 23. The Examiner states that the Long patent discloses two panels attached to each other in a permanent fashion and a releasable attachment of one of those panels to the front waist region. The Examiner argues that one of ordinary skill in the art would know that the panels could be refastenably attached to each other and permanently attached in the waist regions. The article described in claim 23 can not be over-simplified in this way to suit the Examiner's position. First, the Examiner does not provide an explanation of why one of skill the art would be motivated to modify the types of attachment. Second, claim 23 includes additional elements not addressed by the Examiner. The Examiner fails to explain how the Long patent discloses the additional feature of a fastener permanently attached to the back panels adjacent the side seams. Accordingly, Applicants submit that the Examiner has not set forth a *prima facie* case of obviousness and claims 23-26 and 28-30 are patentable over the Long patent.

#### **4. Rejection of Claims 9, 18 and 27 under 35 U.S.C. § 103(a)**

In the Office Action mailed July 5, 2002 the Examiner also rejects claims 9, 18 and 27 under 35 U.S.C. § 103(a) as being unpatentable over the Long patent. This rejection is respectfully traversed.

The Examiner renews the grounds for rejection that she made in the Office Action mailed December 31, 2001. The Examiner acknowledges that the Long patent fails to disclose the releasable bond of the second margin being three times greater in length than that of the fastener edge. However, the Examiner believes that "...it would have been obvious to one having ordinary skill in the art at the time the invention was made to have to (*sic*, the) length of the releasable bond being three times greater than the length of the fastener edge, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art."

The requirements for a *prima facie* case of obviousness are set forth in Applicants' response filed April 10, 2002. Claim 9 depends from claim 1. Claim 18 depends from claim 14. Claim 27 depends from claim 23. Accordingly, each of the above claims includes all of the elements of the claims from which they depend. In addition, as set forth above, the Long patent does not disclose each and every element of the above independent claims. As such, Applicants respectfully assert that the Long patent simply does not teach or suggest all the claim limitations.

In addition, Applicants renew their assertion that there is no motivation or suggestion to modify the Long patent in the manner suggested by the Examiner. While Applicants recognize that the Examiner believes that discovering an optimum value of a result effective variable involves only routine skill in the art, MPEP 2144.05(II)(B) states that "[a] particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination if the optimum or workable ranges of said variable might be characterized as routine experimentation." Thus, despite the Examiner's assertion, the Examiner fails to provide any suggestion or motivation to modify the Long patent, and has failed to demonstrate that the elements of claims 9, 18 and 27 are recognized in the art as result-effective. Accordingly, Applicants submit that the Examiner has not set forth a *prima facie* case of obviousness and claims 9, 18 and 27 are patentable over the Long patent.

#### **5. Conclusion**

In the Office Action mailed July 5, 2002, the Examiner objects to claims 13, 22 and 31 as being dependent upon a rejected base claim, but the Examiner indicates these claims would be allowable if rewritten in independent form including all of the limitations of the base claim. Applicants appreciate the Examiner's acknowledgment of patentable subject matter.

In view of the above remarks, reexamination, reconsideration and withdrawal of the rejections of claims 1-31 under 35 U.S.C. § 112, second paragraph, 102 and 103 are respectfully requested. Moreover, it is respectfully submitted that all of the presently presented claims are in form for allowance and such action is earnestly solicited.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. The undersigned may be reached at: (920) 721-2433.

Respectfully submitted,

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**Appendix A – Version of Claims That Reflect the Changes Made**

23. (Twice Amended) A pant-like, refastenable, disposable absorbent article which defines a front waist region, a back waist region, a crotch region which extends between and connects said waist regions, a longitudinal direction and a lateral direction, said absorbent article comprising:

a) an absorbent chassis which defines an exterior surface, an interior surface opposite said exterior surface, a pair of laterally opposed side edges and a pair of longitudinally opposed waist edges; and

b) a pair of opposed back panels which are permanently attached to said side edges of said absorbent chassis in said back waist region of said absorbent article;

c) a pair of opposed front panels which are permanently attached to said side edges of said absorbent chassis in said front waist region of said absorbent article wherein said front panel and said back panel are releasably connected together along a side seam to provide a releasable joint and to define a waist opening and a pair of leg openings and provide said absorbent article; and

d) a fastener permanently attached to each of said back panels adjacent said side seams and configured to refastenably engage one of said front panels and upon disengagement of said releasable joints, said fasteners are also configured to refastenably engage said exterior surface of said absorbent chassis in said front waist region, wherein said ~~fastener~~ fasteners defines define a fastener edge length in said longitudinal direction and said releasable joint joints defines define a releasable joint length in said longitudinal direction, wherein said releasable joint length is greater than said fastener edge length.